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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,698	02/06/2004	Charles C. Hart	CBUS-1631-AV	4710
21378 7590 09/17/2007 APPLIED MEDICAL RESOURCES CORPORATION 22872 Avenida Empresa Rancho Santa Margarita, CA 92688			EXAMINER WOODALL, NICHOLAS W	
			ART UNIT 3733	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/664,698

Applicant(s)

HART ET AL.

Examiner

Nicholas Woodall

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to applicant's amendment received on 06/29/2007.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 36-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty (U.S. Patent 3,503,398).

Regarding claim 36, Fogarty discloses an embodiment of a device comprising opposable first and second pads formed from a material, a multiplicity of first projections disposed to extend outwardly of the first pad and provide a first tissue contacting surface, and a multiplicity of second projections disposed to extend outwardly of the second pad and to provide a second tissue contacting surface, wherein the first and second projections interrelate to facilitate traction when the pads are moved toward one another. The projections and the pads form a monolithic structure inherently being made from the same material. Regarding claim 37, Fogarty discloses a device wherein the first and second pads have particularly smooth surfaces, which are adapted to face the tissue of the patient and have a first traction characteristic. The examiner is interpreting the word particular to mean specific, therefore the examiner is interpreting the claim limitation to be that the first and second pads have a specific surface having a first traction characteristic. Regarding claim 38, Fogarty discloses a device wherein

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each of the first and second tissue contacting surfaces has a traction characteristic different from the first traction characteristics. The examiner believes that the smooth surface of the pad will have a low surface traction characteristic and the projections will have a higher surface traction characteristic especially in the direction of the sharp points of the projections. Regarding claims 39-41, Fogarty discloses a device wherein the projections are arranged in a pattern. In Figure 5a Fogarty discloses the projections being in a waffle like pattern and in Figure 7 Fogarty shows the projections being in a saw-tooth like pattern. Regarding claim 42, Fogarty discloses a device wherein each of the first and second projections has an axis and a radial cross-section of either a polygonal configuration or an irregular configuration. Fogarty discloses projections wherein the radial cross-section is an irregular configuration. Regarding claim 43, Fogarty discloses a device wherein the axis of at least one of the projections is disposed at an angle to the particularly smooth surface of at least one of the first or second pads. Fogarty discloses the projections are inclined at an angle of approximately 45 degrees relative to the particularly smooth surface of the first or second pads. Regarding claim 44, Fogarty discloses a device further comprising opposable first and second jaws to fixedly support the first and second pads. Regarding claim 45, Fogarty discloses a device wherein the pattern of the projections provides traction with the tissue of a first magnitude in a first direction and provides traction with the tissue of a second magnitude in a second direction, wherein the first magnitude is different from the second magnitude and the first direction is different from the second direction (column 3 lines 31-43). Regarding claim 46, Fogarty discloses a device

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wherein at least one of the first projections and at least one of the second projections extend between a first end and a second end, wherein the first end is disposed in proximity to the particular surface of the first pad and the second pad and the second end extending outwardly of the first and second pad such that the radial cross-section of the projections progressively decrease in area from the first end to the second end.

Fogarty discloses in the figures that the projections are substantially pyramid shaped and extend from a base on the surface of the pads to points extended away from the surface of the pads, therefore the cross-section area of the projections would progressively decrease from the first end or base end of the projections towards the second end or tip of the projections. Regarding claim 49, Fogarty discloses a device wherein the first and second pads have a distal end, a proximal end, and a surface facing the tissue and extending between the proximal and distal ends, wherein the first projections extend at an angle away from the proximal end of the first pad and away from the surface of the first pad and towards the distal end of the first pad and towards the surface of the second pad and the second projections extend at an angle away from the proximal end of the second and away from the surface of the second pad and towards the distal end of the second pad and towards the surface of the first pad. The examiner believes the center row of projections shown in Figure 5A meet the requirements of this claim as discussed above. Fogarty fails to disclose the pads and the projections are made from a soft resilient material. Fogarty teaches another embodiment of the device wherein the pads are made from a soft resilient material in order to prevent the device from breaking or dislodging of plaque within the blood

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stream. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Fogarty wherein the pads and projections are made from a soft resilient material in view of Fogarty in order to prevent the device from breaking or dislodging plaque within the blood stream.

Regarding claim 47, Fogarty discloses the invention as claimed except for the projections to include an ovular cross-section. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to manufacture the projections of Fogarty to include an ovular cross-section, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing a cross-section of a projection. In re Dailey and Eilers, 149 USPQ 47 (1966).

Regarding claim 48, Fogarty discloses the invention as claimed except for the pads and projections being made from a hydrophilic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Fogarty wherein the pads and projections are made from a hydrophilic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Regarding claim 50, Fogarty discloses the invention as claimed except for the multiplicity of the first projections comprises at least three rows and three columns of projections. It would have been obvious to one having ordinary skill in the art at the time

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the invention was made to manufacture the device of Fogarty wherein the multiplicity of the first projections comprises at least three columns and three rows of projections, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

4. Claims 51-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty (U.S. Patent 3,503,398) in view of Fossum (U.S. Patent 6,077,280).

Regarding claim 51, Fogarty discloses a device comprising a first jaw having a first surface, a soft compliant material pad covering the first surface of the first jaw and having a first tissue contacting surface, a second jaw connected to the first jaw and biased towards a proximal relationship with the first jaw, wherein the second jaw includes a second surface facing towards the first surface, a second soft compliant material pad covering the second surface of the second jaw having a second tissue contacting surface facing towards the first tissue contacting surface, a plurality of first projections integrated with the first soft compliant material pad and angling away from the first tissue contacting surface of the soft compliant material pad, and a plurality of second projections integrated with the second soft compliant material pad angling away from the second tissue contacting surface of the second soft compliant material pad. Fogarty fails to disclose the jaws being made from a hard plastic material. Fossum teaches a device wherein the jaws are made from a hard plastic material in order to reduce the cost of manufacture the device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of

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Fogarty wherein the jaws are made from a hard plastic in view of Fossum in order to reduce the cost of manufacturing the device.

Regarding claim 48, the combination of Fogarty and Fossum disclose the invention as claimed except for the pads being made from a hydrophilic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Fogarty modified by Fossum wherein the pads and projections are made from a hydrophilic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Regarding claim 53, the combination of Fogarty and Fossum disclose a device wherein the first pad has a distal end and a proximal end adjacent to a connection between the first and second jaws and the plurality of first projections being angled away from the first tissue contacting surface of the first pad and away from the proximal end of the first pad and towards the second tissue contacting surface and towards the distal end of the first pad. The combination of Fogarty and Fossum fail to disclose the multiplicity of the first projections comprises at least three rows and three columns of projections. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Fogarty modified by Fossum wherein the multiplicity of the first projections comprises at least three columns and three rows of projections, since it has been held that mere duplication of the essential

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working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claims 54 and 55, the combination of Fogarty and Fossum disclose a device wherein each of the first projections include an axis extending between a first end disposed near the first tissue contacting surface and a second end, wherein the radial cross-section progressively decreases in area from the first end to the second end (claim 54). The combination of Fogarty and Fossum fail to disclose the radial cross-section of the first projections is ovular. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to manufacture the projections of Fogarty modified by Fossum to include an ovular cross-section, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing a cross-section of a projection. In re Dailey and Eilers, 149 USPQ 47 (1966).

Response to Arguments

5. Applicant's arguments with respect to claims 36-55 have been considered but are moot in view of the new ground(s) of rejection. The examiner has presented new grounds of rejection as necessitated by the amendment received on 06/29/2007.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

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7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWWW



E. C. ROBERT
SUPERVISORY PATENT EXAMINER